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Mr. Thomas Mims
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MINORITY REPORT

OF THE

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COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES OF PENNSYLVANIA,

In relation to the rights of transit of slave property through this State.

[1000 copies ordered to be printed by the House of Representatives, January 25, 1856.]

The undersigned, members of the Judiciary Committee, being unable to concur with the majority of said committee in the views and principles set forth in their able and learned report, on the petition of Col. Joseph Paxton, of Cattawissa, praying the Legislature "to enact a law securing to the citizens of slave-holding States, who may pass through this Commonwealth, or transiently sojourn therein, with their slaves, all the rights of property in said slaves guaranteed to them by the laws of any other State, and making it a penal offence to attempt by word or deed to decoy, or in any manner to alienate the said slaves from their said owners, against the said owners' will," feel that it is due to themselves, as well as to the people of this Commonwealth, that they should set forth the grounds of their dissent. We do not concur with the majority, "that the right of transit through Pennsylvania, with their slaves, is already secured to the citizens of the slave-holding States, by the law of nations and the Federal Constitution, and that no statute of this State affects to disturb it." Neither can we yield our assent to the reasoning and doctrines generally laid down in the report of the majority. We do not propose to advance any views in conflict with the vested rights of the slave-holding States, to impugn the compromises of the Constitution, or to enter into any of the vexed questions growing out of Congressional legislation on the subject of slavery; much less do we intend to discuss the great moral and political evils of slavery, from which this Commonwealth has been happily exempted by the humane and enlightened legislation of the past, gradually removing this pernicious institution by a cautious and progressive series of acts, from the soil of Pennsylvania. We shall confine our remarks to the points in which we differ from the majority.

1st. We hold that slavery is exclusively a local institution, and that it is not recognized by the law of nature, the common law, or the civil law. Such is the opinion of the ablest writers on jurisprudence. Blackstone in his Commentaries, vol. 1, p. 42, says, "upon the law of nature and the law of revelation depend all human laws; that is to say, no human law should be suffered to contradict these. The law of England abhors and will not endure the existence of slavery within this nation. A slave or negro, the instant he lands in England, becomes free." "When a slave comes within the exclusive jurisdiction of England he ceases to be a slave, because the law of England positively and notoriously prohibits and forbids the existence of such a relation between man and man." This was admitted and so expressed by Mr. Webster, as Secretary of State, in his correspondence with Lord Ashburton, in the Creole case. Webster's works, vol. 5, p. 315. The civil law takes the same view of slavery, and declares it to be against the rights of nature. Inst. Lib. 1, tit. 3, sec. 2 Vatel's Law of Nations, book 2, chap. 9. When our forefathers migrated to this country they brought with them the common law of England, and it has become the basis of all our laws.

2d. We hold it to be equally clear that the right of slave-holders to pass through or sojourn in this State, with their slaves, is not conceded by the law of nations. We have already shown that freedom is the birthright and the natural condition of man. Story, in his Conflict of Laws, sec. 104, says: "Personal disqualifications not arising from the law of nature, but from the customary or positive law of a foreign country, especially such as are of a penal nature, are not generally regarded in other countries, where the like disqualifications do not exist. They are strictly territorial. So the state of slavery will not be recognized in any country whose institutions and policy prohibit slavery." The law of slavery is *in invitum*, and when a slave gets out of the territory where it prevails, and out of the power of his master, and gets under the protection of another power, without any wrongful act done by the party giving that protection, the right of the master, which is founded on the municipal law of the particular place only, does not continue. "The fact of a slave being taken to a country where slavery or involuntary servitude is not tolerated, operates on the condition of the slave, and produces immediate emancipation." 16 Louisiana Rep. 489; 7 Louisiana Rep. 172. Slavery exists only by virtue of the laws of the State where it is sanctioned; and if the slave escape from such State to a free State, he is free, according to the principles of the common law, and re-capture in a free State is authorized only by the Constitution and act of Congress. There is no general principle in the law of nations which requires such surrender. Jones vs. Vansant, 2 M'Lean, 596. By the law of nations no State is bound to recognize slavery in another State. 16 Peters, R. 539, or the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favor of the subjects of other nations. The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of territorial laws. 16 Peters, 611. And it is well settled with respect to their municipal regulations, that the several States of this Union are to each other foreign. 2 Wash. 298. It appears, therefore, that by the law of nations the slave-holder would have no right to pass through our State with his slaves; nor is he entitled to exercise that right by the comity of nations. For it appears to be just as well as settled, that that which is called *comitas inter communitates*, comity between states or nations, can not prevail in any case where it violates the law of our country, the law of nature or the law of God. Forbes *vs.* Cochran, 2 Barn. & Cress 463. It has been clearly shown by the above authorities that slavery is against the law of nations, and we shall presently show that it is also against the laws of Pennsylvania.

3d. Is there such a right recognized in the Constitution of the United States? The clause of the Constitution cited by the majority of the committee, under which this alleged right of transit with slaves is claimed, is Article 1st, sec.

8, part 3: "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes;" and Article 4, sec. 2: "The citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."

Chief Justice Marshall, in the case of Gibbons *vs.* Ogden, 9 Wheaton, 195, in construing Article 1, sect. 8, p. 3, of the Constitution, and the power of Congress to regulate commerce between the States, says: "The genius and character of the whole Government seems to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally, but not to those which are completely within a particular State, and which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government. The complete internal commerce of a State, then, may be considered as reserved to the State itself." It has been clearly shown that slavery is local, and purely the creature of municipal regulation; that it is looked upon with disfavor, and is not recognized by the common law, the law of nations, or the law of nature. This clause of the Constitution gives Congress the right to regulate commerce; and if the construction put upon it in the report of the majority be correct, then Congress has the right to regulate commerce in slaves between the States, and the buying and selling of men in our public markets. This is certainly a novel and extraordinary construction of this clause of the Constitution. On what authority it is based, we are not informed, as none is cited. That the master's claim to the service of his slave, and to a species of property in him, has been recognized by our courts and judicial tribunals, cannot be denied; but that right is essentially different from his right of property in inanimate things and domestic animals. His right to the former depends on arbitrary, local law, and is in violation of man's natural rights; but his property in the latter is acknowledged by the laws of nature and the laws of God. The laws that regard slavery as property, are local, and only apply so far as such laws can operate. Such laws do not make them personal property generally. 18 Pickens' Rep. 216. The 4th Article, sec. 2d, of the Constitution, is believed to be still wider from the mark, and to have no more reference to slavery than to the power to make war. But it secures to citizens of each State the right of ingress, egress and regress into the several States of this Union; and while there, the same immunities, under the laws of the State, that citizens of the same State enjoy under the laws thereof.

But the citizen does not carry with him, the laws of his domicil, into a sister State. The moment he crosses the line of Virginia into this State, he is under the laws of Pennsylvania and not the laws of Virginia. See 4 Johns. C., 430, 2 Kent's Com., 258. And if he brings his slaves with him, the moment they cross the line they are free. But it has been decided that the 2d section, Article 4th, of the Constitution of the United States does not extend to the case of a slave voluntarily carried by his master into another State, and left there under the protection of a law declaring him free. Butler *vs.* Hopper, 1 W. C. R., 499. There is nothing in the letter or the spirit of the Constitution that will justify the right claimed under it, nor has the Supreme Court of the United States, nor even our State courts, so far as we have been able to ascertain, ever given it such a construction. By the act of this Commonwealth, passed 1st March, 1780, for the gradual abolition of slavery, it is provided that all negroes, mulattoes and others born within this State, after the passage of the act, should be free. By the act of 3d March, 1847, section 7, so much of the act of 1st March, 1780, as authorizes the masters or owners of slaves to bring and retain such slaves within this Commonwealth for the period of six months in involuntary servitude, or for any period of time whatever, be and the same is hereby repealed. It has been decided that a slave brought into this State since the passage of the act 3d March, 1847, is *ipso facto* free. Pierce's case decided in common pleas, Philadelphia, in 1848.

The rule of the common law of England, in regard to slavery before the Revolution, became the common law of Pennsylvania, except so far as modified by the Constitution of the United States. The fugitives were free the moment they touched the soil of Pennsylvania; all the incidents, accompaniments and attributes of bondage fell from around them. Kauffman *vs.* Oliver, 10 Barr, 517.

If this right of transit with slaves is incorporated in the Constitution itself, then all State laws prohibiting the introduction of slaves would be unconstitutional, and consequently void. But several of the States of this Union have enacted just such laws, and they have been passed upon by the Supreme Court of the United States, and their validity has never been doubted. Slaves brought into the State of Maryland in violation of the laws of that State, are declared to be free. Rhodes *vs.* Bell, 2 How. Rep. 405. 16 Peters' R. 611. Thomas *vs.* Generis, 16 Louisiana Rep. 488. 5 Leigh 615. 10 Leigh 697. 9 Gill. & Johns. 19. 11 Louisiana Rep. 500. 10 How. Rep. 87.

The right to pursue and recapture fugitive slaves escaping from their masters into a free State, is not raised by the petition referred to the committee, and has not been noticed in this report. The seventh section of the act of March 3, 1847, having expressly repealed the provisions of the act of March 1, 1780, authorizing the masters or owners of slaves to bring and retain such slaves within this Commonwealth while temporarily sojourning here, and said act never having been pronounced unconstitutional by any federal tribunal, the undersigned do not deem it expedient, on any ground, to disturb it. We are satisfied that the abrogation of this section of the act of 1847 would lead to sectional discord and domestic disturbances, and that our friendly relations with the citizens of the southern States, as well as our own peace and tranquility, will best be maintained by the denial of the prayer of the petitioner.

D. PHELPS,
E. JOY MORRIS,
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